

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, ) 2:98-cr-00171-GEB  
Plaintiff, )  
v. ) SENTENCING DECISION  
DANIEL ROSEN, HELMI MANSOUR and )  
AYMAN MANSOUR, ) FOLLOWING REMAND  
Defendants. )  
\_\_\_\_\_  
)

The Ninth Circuit remanded sentencing in this action for further proceedings in light of United States v. Booker, 543 U.S. 220 (2005), and United States v. Ameline, 409 F.3d 1073 (9th Cir. 2005) (en banc). Ameline requires a district court on remand to consider whether the sentence previously imposed "would have been materially different had the district court known that the Guidelines were advisory. . . ." 409 F.3d at 1084. Following remand, I issued an Order to the parties on August 19, 2005, in which their views were requested on the issue. On December 19, 2005, Defendants Daniel Rosen ("Rosen") and Ayman Mansour filed Ameline briefs, in which both Defendants assert their sentences would have been materially different had the guidelines been advisory. On January 17, 2006, Helmi Mansour

1 filed a "Notice Opting Out of Ameline Re-sentencing."

2 To determine the remand issue, I have considered the  
3 following: both Defendants' Presentence Investigation Reports ("PSR");  
4 the transcripts of Defendants' sentencing hearings; and Rosen's and  
5 Ayman Mansour's respective Ameline Briefs.

6 Each Defendant's re-sentencing request is discussed below.

7 Defendant Rosen

8 Rosen was convicted on all twenty-three counts charged  
9 against him, including conspiracy to distribute list I chemicals under  
10 21 U.S.C. § 846, 841 (d)(1). Rosen's Sentencing Guideline range was  
11 determined to be 188-235 months, and the probation officer recommended  
12 Rosen be sentenced at the bottom of that range. (Rosen's PSR at ¶  
13 85.) As revealed at trial and in his PSR, Rosen's business generated  
14 millions of dollars in proceeds from pseudoephedrine sales.

15 At Rosen's sentencing hearing held on October 13, 2000, the  
16 government moved for an upward departure from the Guideline range and  
17 Rosen moved for a downward departure. I was not persuaded by the  
18 government's motion, and declined to grant Rosen's downward departure  
19 motion because during his trial testimony, Rosen attempted to "dup[e]  
20 the jury" by "feign[ing] ignorance of the truth" of the charges  
21 against him. (Sentencing Hr'g Tr. at 52, 56, Oct. 13, 2000.)

22 During Rosen's sentencing hearing, I referenced sentencing  
23 factors in 18 U.S.C. § 3553(a), specifically "the need for the  
24 sentence to reflect[] the seriousness of the offense[s]," "deterrence  
25 as far as other members of society is concerned," and the fact that  
26 Rosen's crime fostered violence. I concluded these factors supported  
27 a sentence at the top of the Guideline range. (Id. at 57-59.)  
28 However, I noted that § 3553(a) calls for "a sentence sufficient but

1 not greater than necessary to comply with the purposes set forth in  
2 the section." (Id. at 59.) I then considered the "aspect of the  
3 deterrent factor which . . . focuses on whether a sentence is going to  
4 deter the defendant in front of me[,] . . . the factor that concerns  
5 protecting the public from further crimes of the defendant[,]" and  
6 "the disruptive impact . . . incarceration [would] have on the  
7 defendant's personal life[,]" and found these factors supported a  
8 sentence at the bottom of the Guideline range. (Id. at 57-59.) I  
9 then sentenced Rosen at the bottom of that range.

10 The record reveals I treated Rosen's Guideline range as more  
11 than just one of several factors to be considered during sentencing,  
12 United States v. Zavala, 443 F.3d 1165, 1171 (9th Cir. 2006), and did  
13 not "attempt to find the most reasonable sentence for [Rosen] within  
14 the territory of all possible reasonable sentences." Id. at 1170  
15 (emphasis added). But consideration of the sentencing record and  
16 bearing in mind that the "Guideline calculation" is to be accorded no  
17 "greater weight than [what is to be] accord[ed] the other § 3553(a)  
18 factors[,]" I have decided that even sentencing Rosen under the  
19 advisory guidelines would not result in a materially different  
20 sentence than what he received because of how I weighed the § 3553(a)  
21 factors discussed during his sentencing. Id. at 1171.

22 Ayman Mansour

23 Ayman Mansour was convicted on the three counts charged  
24 against him, including conspiracy to distribute list I chemicals under  
25 21 U.S.C. § 846, 841 (d)(1). Ayman Mansour's Sentencing Guideline  
26 range was determined to be 135-168 months, and the probation officer  
27 recommended Ayman Mansour be sentenced at the top of that range.  
28 (Defendant Mansour's PSR at ¶ 87.)

1           At his sentencing hearing held on February 2, 2001, I  
2 declined to grant Ayman Mansour's motion for downward departure  
3 because I felt he had been dishonest throughout his trial and  
4 sentencing proceedings. (Sentencing Hr'g Tr. at 74, Feb. 1, 2001.) I  
5 also expressed discomfort with the recommendation in the PSR that  
6 Ayman Mansour be sentenced at the top of his Guideline range, stating  
7 "I have a problem going there. . . . His sentencing range involves a  
8 lot of years." (Id. at 73.)

9           During the sentencing hearing, I focused primarily on the  
10 deterrence factor in § 3553(a). See United States v. Mix, 442 F.3d  
11 1191, 1197 (9th Cir. 2006) ("A district court is not required to refer  
12 to each factor listed in § 3553(a)."). Although I was uncertain how  
13 much time would be necessary to deter him from further criminal  
14 activity, I explained that a sentence at the bottom of the range,  
15 roughly eleven and one-fourth years, "is a long time for an individual  
16 to serve in prison. It gives the individual a lot of time to think  
17 about the mistakes he made in violating the law." (Id. at 74.) I  
18 also considered Ayman Mansour's background, as was evidenced when I  
19 stated "[t]he only prison time he has served in the past is one day.  
20 He's never been to jail before except for one day." (Id. at 73.) In  
21 light of these two factors, I ultimately determined that a "sentence  
22 [at the bottom of the Guidelines] would serve the purposes of 3553."  
23 (Id. at 74.)

24           The record reveals I treated Ayman Mansour's Guideline range  
25 as more than just one of several sentencing factors and that I did not  
26 heed present law that accords the "Guideline [range] calculation" no  
27 "greater weight than [is] accord[ed] the other § 3553(a) factors."  
28 Zavala, 443 F.3d at 1171. Nor did I "attempt to find the most

1 reasonable sentence for [Ayman Mansour] within the territory of all  
2 possible reasonable sentences." Id. at 1170 (emphasis added). But  
3 even under the post-Booker and Ameline sentencing regimen, Ayman  
4 Mansour's sentence would not be materially different; Ayman Mansour  
5 was involved with the operation of "front" business for the storage  
6 and shipping of pseudoephedrine, and the § 3553 factors discussed  
7 during his sentencing hearing, as well as the factors considering the  
8 seriousness of the offense, promoting respect for the law, and  
9 providing just punishment for the offenses, reveal his sentence was  
10 appropriate and would not be materially different if imposed again.

11 IT IS SO ORDERED.

12 Dated: June 5, 2006

13                           /s/ Garland E. Burrell, Jr.  
14                           GARLAND E. BURRELL, JR.  
15                           United States District Judge

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